

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of

Satellite Delivery of Network Signals  
to Unserved Households for  
Purposes of the Satellite Home  
Viewer Act

Part 73 Definition and Measurement  
of Signals of Grade B Intensity

**CS Docket No. 98-201**

**REPLY COMMENTS OF  
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The following reply comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"), in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1</sup> ALTV is a non-profit, incorporated association of broadcast television stations unaffiliated with the ABC, CBS, or NBC television networks.<sup>2</sup>

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<sup>1</sup>FCC 98-302 (released November 17, 1998)[hereinafter cited as *Notice*].

<sup>2</sup>Local stations among ALTV's members include not only traditional independent stations, but also local television stations affiliated with the three emerging networks, Fox, UPN, and WB, and the new PaxTV network. As used herein, the term "local television stations" includes ALTV member stations, but excludes affiliates of ABC, CBS, and NBC.

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As ALTV observed in its comments:

ALTV's Fox affiliate members already have been active in litigation seeking DBS operators' compliance with the Satellite Home Viewer Act provisions which are the subject of this proceeding. Furthermore, the bulk of the remaining members of ALTV are affiliates of the UPN, WB, and PaxTV networks.<sup>3</sup> As these networks enter the realm of established networks, their affiliates increasingly will share the concern of affiliates of the more entrenched networks with respect to satellite retransmission of the signals of distant stations affiliated with the same network. No less than their competitor affiliates in their local markets, they will seek to assure that they remain the preeminent source of their network's programming in their markets.<sup>4</sup>

Therefore, ALTV submits these reply comments in the hope of heading off an FCC foray into what essentially would be a substantive revamping of copyright law.

Satellite interests fundamental error in this proceeding is according the Commission jurisdiction and authority to rewrite Section 119 of the Copyright Act.<sup>5</sup> They would have the Commission make a public interest finding as if the Commission were writing on a *tabula rasa*. They offer numerous suggestions for revising provisions of the FCC's rules relating to Grade B signal intensity and the Grade B contour.<sup>6</sup> They assert that "[t]he Copyright Office itself has recognized and deferred to, the Commission's expertise regarding the unserved household restriction."<sup>7</sup> None of this, however, detracts from the seminal reality that Congress for now has

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<sup>3</sup>Also included are numerous stations owned by entities which own or hold substantial interests in these new and emergent networks.

<sup>4</sup>Comments of ALTV, CS Docket No. 98-201 (filed December 11, 1998) at 2 [hereinafter cited as "ALTV Comments"].

<sup>5</sup>17 U.S.C. §119.

<sup>6</sup>*See, e.g.*, Comments of the Satellite Broadcasting and Communications Association, CS Docket No. 98-201 (filed December 11, 1998) at 18 [hereinafter cited as "SBCA Comments"].

<sup>7</sup>Comments of the Satellite Broadcasting and Communications Association, CS Docket No. 98-201 (filed December 11, 1998), at 8 [hereinafter cited as "SBCA Comments"].

made this a matter of copyright law. Again, what satellite interests seek is an administrative expansion of the scope of a compulsory license -- something well beyond the boundaries of the Commission's authority. Neither supplying omissions nor enlarging the scope of a statute falls with the purview of administrative interpretation of a statute.<sup>8</sup> Similarly, a compulsory license "represents a derogation from the basic copyright principles embodied in the Copyright Act that ensure to copyright owners the right to control the use of their creations and should, therefore, be construed narrowly rather than broadly."<sup>9</sup> Satellite interests, therefore, seek to lure the Commission far afield from its proper jurisdiction.

Satellite interests also have lost sight of the true intent of Section 119 *vis-a-vis* network signals. First, Congress sought to provide service in so-called "white areas," where network service was otherwise unavailable. That was envisioned then as a finite geographic area and a limited number of television households, perhaps, two per cent of the total number of television households at the time.<sup>10</sup> Indeed, one satellite distributor testified:

Do we harm the local broadcaster? No, because our customers aren't reached by an over-the-air broadcast....So most, if not all, of these million homes are lost and will

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<sup>8</sup>*Iselin v. United States*, 270 U.S. 245, 251 (1926).

<sup>9</sup>*Definition of Cable Systems (SMATV)*, 56 *Fed. Reg.* 31580, 31582 (1991); see *Fame Publishing Co., Inc., v. Alabama Custom Tape, Inc.*, 507 F. 2d 667, 670 (5th. Cir. 1975), *cert. denied*, 423 U.S. 841 (1975).

<sup>10</sup>Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Satellite Home Viewer Copyright Act, Serial No. 89 (January 27, 1988) at 193, Statement of Ralph Oman, Register of Copyrights, at 16 ("Although the white area problem is an important one to the parties affected, the networks estimate that at most only between one and two percent of American television homes do not receive their signals.") [hereinafter cited as "1988 Hearings"]. Even the Committee on Commerce and Energy estimated a range of one to six million eligible households. H.R. Rep. No. 100-887 (Part II), 100th Cong., 2d Sess. at 15.

remain lost to the local broadcaster....H.R. 2848 is the only way to guarantee network television to one million rural households....<sup>11</sup>

Thus, in 1988, no one, least of all, Congress, ever contemplated widespread carriage of network signals beyond the limited confines of truly, rural areas where network signals simply were unavailable.

Second, Congress did not contemplate extension of the compulsory license to permit network affiliate delivery to satellite subscribers based on the quality of the picture on their sets. The report language is several places bars such a view of the law:

In essence, the statutory license for network signals applies in areas where the signals cannot be received via rooftop antennas or cable.<sup>12</sup>

The bill confines the license to the so-called “white areas,” that is, households not capable of receiving a particular network by conventional rooftop antennas....<sup>13</sup>

Therefore, as much as the Commission may wish to grant satellite carriers a broader compulsory license, it treads dangerously on Congress’s turf in even considering such an action.

Finally, on a more practical note, ALTV questions whether the Commission could accomplish anything of immediate significance in this proceeding. Any action designed to expand the scope of the compulsory license would draw multiple petitions for review and likely motions for stay as well. In the time it would take the court to hear and decide the petitions for review, Congress almost necessarily will have acted to extend the compulsory license in Section 119.<sup>14</sup> In

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<sup>11</sup>1988 Hearings at 163-164, Statement of Kazie Metger, President, Satellite Broadcast Networks at 5-6.

<sup>12</sup>H.R. Rep. No. 100-887 (Part I), 100th Cong., 2d Sess. at 15.

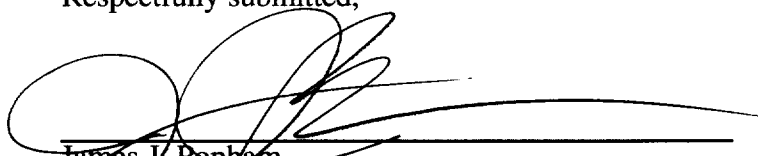
<sup>13</sup>*Id.* at 18. Satellite interests may well dislike the law, given their recognition that “many potential satellite subscribers may not have antennas at all....” SBCA Comments at 20, n.52. Their concerns, however, neither change the law nor give the Commission authority to do so.

<sup>14</sup>The compulsory license will expire on December 31, 1999.

so doing, it is expected to take up a local-into-local compulsory license and will have, as well, ample opportunity to modify the definition of unserved household in Section 119. In short, Congress will address the issues raised by satellite interests. The Commission would do best to leave them alone!

ALTV, therefore, urges the Commission to do nothing more in this proceeding than make sound recommendations to Congress after a searching and thoughtful review of the issues.

Respectfully submitted,



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